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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 138

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, PETITIONER

v.

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES

No. 139

UNITED AIR LINES, INC., PETITIONER

v.

NATIONAL MEDIATION BOARD, ET AL.

No. 369

NATIONAL MEDIATION BOARD, ET AL., PETITIONERS

v.

ASSOCIATION FOR THE BENEFIT OF NON-CONTRACT EMPLOYEES

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL MEDIATION BOARD AND ITS MEMBERS

OPINIONS BELOW

The opinions of the district court in Nos. 138 and 369 (R. Nos. 138 and 369,[1] pp. 133–156, 166–170) are

[1] We shall cite the joint record in Nos. 138 and 369 as "R" and the record in No. 139 (which largely duplicates the record in Nos. 138 and 369) as "R. No. 139."

reported at 218 F. Supp. 114. The district court rendered no opinion in No. 139 (R. No. 139, p. 144). The single opinion of the court of appeals disposing of the three cases (R. 175–183) is reported at 330 F. 2d 853.

JURISDICTION

The judgment of the court of appeals was entered on March 12, 1964 (R. 184–185). The petitions for writs of certiorari were filed on June 1, 1964, in Nos. 138 and 139, and on August 10, 1964, in No. 369. The petitions were granted on October 12, 1964, and the cases were consolidated (R. 188–189; R. No. 139, p. 158).

QUESTIONS PRESENTED

1. Whether a district court may stay an order of the National Mediation Board directing a representation election upon the ground that the form of the ballot provided by the Board contains no specific space in which employees may expressly vote not to be represented by any union.

2. Whether a carrier has a right to participate in a National Mediation Board representation proceeding under Section 2, Ninth of the Railway Labor Act.

3. Whether a district court may enjoin the National Mediation Board from conducting a representation election on the ground that the Board should have granted the request of a group of employees opposed to any collective representation to redetermine, or hold a hearing on, the appropriate craft or class within which the election should be conducted.

STATUTE INVOLVED

Section 1, Fifth of the Railway Labor Act, 45 U.S.C. 151, Fifth, provides in pertinent part:

> Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this chapter or by the orders of the Commission.
>
> * * * * *

Section 2 of the Railway Labor Act, 45 U.S.C. 151a-152, provides in pertinent part:

> Sec. 151a. *General purposes.*
>
> The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, or the

right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

Sec. 152. *General duties.*

* * * * *

Second. Consideration of disputes by representatives.

All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Designation of representatives.

Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in it choice of representatives. Representatives of employees for the purposes of this chapter need not be persons in the employ of the carrier, and no carrier shall,

by interference, influence, or coercion seek in any manner to prevent the designation by its employees as thei epresentatives of those who or which are not employees of the carrier.

Fourth. Organization and collective bargaining; freedom from interference by carrier; assistance in organizing or maintaining organization by carrier forbidden; deduction of dues from wages forbidden.

Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representatives of the craft or class for the purposes of this chapter. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, * * *

* * * * *

Sixth. Conference of representatives; time; place; private agreements.

In case of a dispute between a carrier or carriers and its or their employees, aris-

ing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: * * *

* * * * *

Ninth. Disputes as to identity of representatives; designation by Mediation Board; secret elections.

If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this chapter. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized represent-

atives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. * * *

STATEMENT

1. *The Proceedings before the National Mediation Board.*—In August 1962, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees filed with the National Mediation Board (the "NMB" or "Board") an application under Section 2, Ninth of the Railway Labor Act (45 U.S.C. 152, Ninth) to investigate a representation dispute among employees of United Air Lines ("United") in a craft or class known as "clerical, office, stores, fleet and passenger service employees" (R. 35–36).[2] In January 1947, after lengthy hearings in connection with an application to investigate an airline representation dispute, the NMB in case No. R–1706 determined that the group of employees thus defined constituted an appropriate single craft for collective bargaining purposes in the airline industry (R. 62–63, 77). United and other carriers were in-

[2] The Brotherhood amended its application in October 1962 to cover certain employees in that craft who had been excluded under the August application (R. 37).

vited by the Board to submit their views at these hearings, and United then took the position that these employees constituted an appropriate single craft (R. 63). At United the craft or class covers more than 12,000 non-technical ground employees of the airline, ranging from highly skilled office employees to janitors and laborers (R. 62, 130). Some of them had been represented by the International Association of Machinists (R. 36-37). After investigation, the Board determined that the Brotherhood had obtained a sufficient number of authorization cards under the Board's rules—35 percent of the employees in the craft or class—to warrant a finding that a representation dispute existed; and, on December 19, 1962, the Board scheduled an election by secret ballot to resolve the dispute (R. 37, 127).[3]

The Board proposed to use the same form of printed ballot which has been used under the Railway Labor Act continuously since 1934 (R. 45, 87, 161). The ballot contained the names of the labor organizations which are parties to the dispute—here the Brotherhood of Railway and Steamship Clerks and the International Association of Machinists (R. 127)—and a box below each name for the employee to check if he wished that organization to represent him. In addition, the ballot contained a space in which the employee could designate any other organization or individual he wishes to represent him (R. 127).

[3] Under Section 2, Ninth of the Act, the NMB may take a secret ballot or may "utilize any other appropriate method of ascertaining the names" of the representatives whom the employees designate.

The proposed ballot did not include a space in which an employee might expressly vote against any collective representation (R. 127). The Board's settled practice, however, was, and is, not to certify a representative, but to dismiss the application, unless an absolute majority of the employees eligible to vote cast valid ballots for a representative (R. 46). Under this procedure, an employee who does not wish to be represented may indicate his wishes either by casting a blank or invalid ballot or by refraining from voting (R. 46). The Board had explained this procedure in a general pamphlet describing its practices,[4] and in several of its annual reports.[5] Both United and the Association For the Benefit of Non-Contract Employees (see below, pages 10–11) were aware of the practice (R. 79–80, 109).

United objected to the Board's conducting an election among the employees of the craft or class established in 1947, and urged the Board to reconsider the appropriateness of the group (R. 56, 61–69). United suggested that the group should be divided into three separate crafts or classes and requested the Board to hold a public hearing in which United could participate and furnish evidence bearing on the question (R. 61–69, 72–76). United also protested the form of ballot, on the ground that it failed to

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[4] Administration of the Railway Labor Act by the National *Mediation Board. 1934–1937.* (G.P.O., 1958), pp. 16–18.

[5] See, *e.g.*, 14th Ann. Rep., National Mediation Board (1948), p. 8; 16th Ann. Rep., National Mediation Board (1950), p. 20; 18th Ann. Rep., National Mediation Board (1952), p. 29.

provide a specific space in which employees wishing no collective representation could so indicate (R. 79–86, 89–95).

After extensive correspondence with United, the Board declined to hold a hearing, to reconsider the craft or class, or to change the form of ballot (R. 70–72, 76–78, 86–88, 96–98). The Board pointed out that "the carrier is not a party to this representation dispute" (R. 71); that "no request for a review of the craft or class established by the Board's determination in Case No. R–1706, et al has been received from either organization party to NMB Case No. R–3590" (*ibid.*); and that the two organizations seeking to represent the employees were in agreement that the craft or class previously established was the "proper and appropriate grouping" of the employees (R. 77). In refusing to change the form of the ballot, the Board, after reiterating that the carrier was not a party (R. 86), stated that the type of ballot used was "best designed to ascertain the representation desires of a carrier's employees for the purpose of collective bargaining" (R. 87).

The election, which had been ordered in December 1962, was delayed because of the Board's controversies with United over the form of ballot and the appropriate craft or class, and because of United's refusal, during the controversy, to furnish the Board with the names of the employees involved (R. 61–100). In the interval, a group of United's employees formed an association to oppose collective representation, called the Association for the Benefit of Non-

Contract Employees ("ABNE") (R. 102–111). By the end of March, 1963, ABNE claimed a membership of 6,400 workers, more than half of the employees involved (R. 6, 18). ABNE sought to intervene in the representation proceedings. It requested the Board, on the basis of the information before it, to divide the craft or class previously established into three separate groups or to hold a hearing on the question; and to change the form of ballot so as to provide a specific space for employees affirmatively to vote against any collective representation (R. 102–105). ABNE stated that it was not seeking recognition as a bargaining agent, that it did not want its name on the ballot, and that it would be dissolved after "it has served its purpose" (R. 111).

The NMB denied ABNE's petition to intervene because the Association did not seek to represent employees as a collective bargaining agent (R. 14–18). The Board also denied ABNE's requests for a redetermination of the craft or class and for a change in the form of ballot (R. 14–18).

2. *The Court Proceedings.*—After the Board rejected its requests, United on February 12, 1963, filed a complaint in the district court seeking to enjoin the Board from conducting an election (1) unless it had held a hearing on the craft or class issue, and (2) unless the form of ballot permitted an employee to cast a vote against representation (R. 139, pp. 3–10). The district court (Judge Matthews) granted the Board's motion for summary judgment and dismissed the complaint (R. 139, p. 144). While the dis-

trict court gave no reasons, the court of appeals later assumed that the dismissal was for lack of standing (R. 177).

Shortly after the district court dismissed United's complaint, ABNE filed a suit against the Board seeking substantially the same relief (R. 4–9). The district court (Judge Hart) entered a temporary restraining order against conducting the election, which had been rescheduled for April 1963 (R. 128). Subsequently, the court (Judge Youngdahl) held that it had jurisdiction to determine the merits of the controversy over the form of the ballot (R. 140–146); that ABNE had standing to challenge the form of ballot (R. 146–147); that the ballot used by the Board violated the Railway Labor Act (R. 147–156); and that "an injunction should issue barring the Board from proceeding with the scheduled election unless the ballots are changed to provide a space in which the voters can vote for no representation" (R. 156).[6]

The court entered such an injunction (R. 132, 170–171). As to ABNE's request for a hearing on the craft or class, the court remanded the matter for reconsideration by the Board "in the light of the Court's conclusion that the Railway Labor Act * * * gives employees a right to have a ballot on which they

[6] In reaching this conclusion, the district court noted that since 1937 the National Labor Relations Board has used a ballot form which provides a space in which employees may indicate that they do not desire to be represented by any union. *Interlake Iron Corp.*, 4 NLRB 55. Excerpts from the Board's *Interlake* opinion explaining the basis for its action are set forth in Judge Youngdahl's opinion (R. 154–155).

may express a preference for no collective bargaining representation" (R. 176, 177).

The court of appeals in a *per curiam* opinion (Judges Miller and Bastian) affirmed the decisions in the *ABNE* case on the basis of the district court's opinion (R. 176–177). The court also affirmed the dismissal of United's suit on the ground that the affirmance in *ABNE* "affords the relief concerning the form of the ballot which United sought," and thus made it unnecessary to decide the "close question as to United's standing * * *" (R. 177).

Judge Wright, although concurring in the *United* case on the ground that United lacked standing (R. 182), dissented in the *ABNE* case because the "District Court was without jurisdiction to enjoin the National Mediation Board from conducting an election to resolve the representation dispute at United Air Lines. *Switchmen's Union* v. *National Mediation Board,* 320 U.S. 297 (1943)" (R. 179).

3. *The Change in the Ballot.* Following the decision of the court of appeals and prior to the filing of the government's petition for certiorari, the Solicitor General held discussions with the NMB in which he suggesed that the Board should consider changing the ballot to remove any ambiguity as to how employees who opposed the designation of a representative might indicate their wishes. On November 6, 1964, the Board, in accordance with the suggestion, adopted an amended form of ballot on which the following statement appears directly above the name of the representatives seeking election:

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INSTRUCTIONS FOR VOTING

No employee is required to vote. If less than a majority of the employees cast valid ballots, no representative will be certified.

The new form of ballot will be used in all elections held after November 23, 1964, and, unless the decisions below in the *ABNE* case are affirmed, will be used in the election in the present case. (The Board's notice of the change and the new sample ballot are set forth in the appendix, *infra*, pp. 63–65.) Thus, the question presented here with reference to the ballot is whether the Board has a statutory duty to put a specific "NO UNION" box on the ballot or has discretion to conclude that the form of ballot adopted on November 6 will best enable it to determine the question of representation.

SUMMARY OF ARGUMENT

I

A. 1. The Railway Labor Act does not require the National Mediation Board to use a ballot providing a spcific box in which to vote "NO UNION," Section 2, Ninth of the Act, which governs the conduct of representation elections, does not require the Board to use any particular form of ballot or, indeed, to use a ballot at all. The very flexibility of the election procedures indicates that the Board has broad discretion to determine what form of ballot is most appropriate to effectuate the purposes of the Railway Labor Act. The statute does not direct the Board to ascertain whether the employees wish to be represented collec-

tively, but to determine the representatives desired by a majority of the class or craft.

2. Since its establishment in 1934, the Board consistently has used a form of ballot which does not provide any space in which employees can vote explicitly for no representation. It has conducted more than 3,400 representation elections using this ballot, an average of more than 110 a year, and its experience has been that this ballot best effectuates the statutory policies. This consistent practice involves an expert judgment on a matter that "has been assigned primarily to the agency created by Congress to administer the Act" (*National Labor Relations Board* v. *Hearst Publications*, 322 U.S. 111, 130), which is entitled to "peculiar weight [because] it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new" (*Norwegian Nitrogen Co.* v. *United States*, 288 U.S. 294, 315).

3. The Board's new form of ballot plainly advises each and every employee how to express a preference for no collective bargaining. Assuming that there is some slight advantage to unions in having a ballot providing spaces for voting for particular unions but no box to vote for no union, that advantage is no more than the statute itself contemplates. The Act in general, and Section 2, Ninth in particular, assume that usually employees will designate representatives to act on their behalf in resolving disputes and arrang-

ing terms and conditions of employment. The form of the ballot asks employees the question upon which the statute directs the Board to ascertain their wishes, *i.e.*, whom do they wish to represent them. The statute was "aimed at securing settlement of labor disputes by inducing collective bargaining with the true representative of the employees * * *" (*Virginian Ry.* v. *System Federation No. 40,* 300 U.S. 515, 548), and the language of Section 2, Ninth, assuming though not requiring the designation of representatives by a majority of the employees, reflects the Congressional policy of encouraging the development of collective bargaining.

B. Under *Switchmen's Union* v. *National Mediation Board,* 320 U.S. 297, the Board's determination that a ballot which does not provide a box to vote "no union" will effectuate the purposes of the Act, is not subject to judicial review. This Court there held that the Board's resolution of a dispute over representation, even though it involved a question of statutory interpretation, was not judicially reviewable. This case is well within the *Switchmen's Union* doctrine even if that case is limited by *Leedom* v. *Kyne,* 358 U.S. 184, 188, since here the Mediation Board has not acted "contrary to a specific prohibition in the Act" nor "in excess of its delegated powers." There is no specific provision in the Act requiring a NO UNION box on the ballot, and the Board's "delegated powers" include determining, in the event of a dispute, the names of the representatives designated or authorized by a majority of the employees in the craft or class.

The essence of the *Switchmen's Union* doctrine is that questions such as those ABNE and United here sought to raise—the effect of the Board's type of ballot upon the exercise by employees of their right to select representatives—are for the Mediation Board rather than the courts. For Congress committed to the Board the responsibility for particularizing and applying to concrete situations the policies and general instructions contained in the Act. Thus to limit judicial review also furthers the aim of the Railway Labor Act to bring about prompt settlement of labor disputes in the transportation industry.

II

United sought to participate in the Board representation proceedings with respect to two issues: (1) the form of the ballot and (2) the craft or class within which the representation election would be conducted. The Board correctly refused to permit United to participate. The Railway Labor Act not only gives a carrier no right to be heard but affirmatively excludes it from participation. Unlike the National Labor Relations Act which provides for a governmental determination of an "appropriate" bargaining unit, the Railway Labor Act leaves determination of the units in which employees will organize exclusively to the employees provided only that there be a majority of an identifiable craft or class. The Mediation Board has a role only "if any dispute shall arise among a carrier's employees" as to the identity of the representative.

The Board's ruling is supported by the language of various provisions of the Act which stress the funda-

mental statutory principle that it is the employees who have the substantive legal right to determine the composition of the collectivity by their voluntary action, so that the question is none of the carrier's concern. Thus, Section 2, Ninth gives the Board no authority to adjudicate representation disputes between carriers and employees, but only such disputes among the employees themselves, and then only at the latters' request. That carriers were not intended to participate in the proceedings by which employees' representatives are chosen is further shown in the provisions of the Act designed to protect employees from carrier influence or interference.

The legislative history of the 1934 amendments of the Act, which added Section 2, Ninth, indicates that one of the purposes was to change the prior practice under which carriers had participated and thereby had influenced and interfered with employees in their choice of representatives. This view also is supported by the Board's consistent administrative interpretation that under the Act carriers have no right to participate in representation election proceedings.

III

It is unclear whether the order of the district court bars the Board from conducting an election without first holding a hearing on, or redetermining, the craft or class in which the election would be conducted. If the order does not stay the election, the Board does not challenge it.

But if the order does have that effect, it should be reversed. The Board's refusal to hold a hearing on

the craft or class did not constitute reviewable error; the statute does not require the Board to hold hearings in connection with Section 2, Ninth proceedings, and whether or not to hold a hearing is within the Board's discretion. Similarly, the Board's decision to adhere to the craft lines drawn in 1947 was within the agency's discretion and was not subject to judicial review. See *Switchmen's Union, supra,* where the Court refused to review Board rulings on craft determinations. Moreover, since the only reason for making craft or class determinations is to determine who are the representatives chosen by a majority for the purpose of collective bargaining, an organization of employees like ABNE, which opposes any collective bargaining, has no legally cognizable interest in the composition of the electorate.

ARGUMENT

I

A DISTRICT COURT IS NOT AUTHORIZED TO STAY AN ORDER OF THE NATIONAL MEDIATION BOARD DIRECTING A REPRESENTATION ELECTION UPON THE GROUND THAT THE BALLOT USED BY THE BOARD CONTAINS NO SPACE IN WHICH EMPLOYEES MAY EXPRESSLY VOTE AGAINST REPRESENTATION

In 1943 this Court held in *Switchmen's Union* v. *National Mediation Board,* 320 U.S. 297, that the action of the National Mediation Board in certifying a collective bargaining representative under Section 2, Ninth of the Railway Labor Act is not judicially reviewable. Fifteen years later in *Leedom* v. *Kyne,*

358 U.S. 184, 188, the Court held that a district court may review a certification of a representative by the National Labor Relations Board where the Board's certification order was "made in excess of its delegated powers and contrary to a specific prohibition in the Act." Assuming that the *Kyne* principle also applies to certifications under the Railway Labor Act, the question here is whether the National Mediation Board acted "in excess of its delegated power and contrary to a specific prohibition in the [Railway Labor] Act" in refusing to provide a space on the ballot in which employees may mark a vote for no representation.[7]

We shall show first that the statute leaves the form of the ballot to be determined by the Mediation Board provided only that it is a reasonable method of carrying out the Board's statutory obligation under Section 2, Ninth. That obligation, in the case of a dispute "as to who are the representatives of the employees" is to certify to both parties and to the carrier "the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in

[7] We agree with the district court that ABNE has standing to challenge the form of the ballot. A group of employees wishing to vote against any collective representation is an, and perhaps the only, appropriate group to complain that the NMB's procedures do not properly allow employees opposed to representation to express their desires. Although ABNE had standing to raise the ballot question, we show below that it was not entitled to an injunction against holding the election.

the dispute." The language of the Act, its organic structure and legislative history, and its long-continued administrative interpretation all show that the Act does not require a ballot containing a specific box in which to vote against collective representation.

In particularizing and applying the policy of the Act in the performance of the foregoing duty the Board has wide discretion with which the courts will not interfere. The ballot now proposed to be used is reasonably directed toward resolving the question, "who are the representatives of such employees designated and authorized in accordance with the requirements of this Act." Accordingly, the case does not come within the narrow exception established by *Leedom* v. *Kyne* but is governed by the general rule that the conduct of representation proceedings by the Board, acting within its statutory authority, is not subject to judicial review.

A. THE RAILWAY LABOR ACT DOES NOT REQUIRE THE MEDIATION BOARD TO USE A BALLOT PROVIDING A SPECIFIC BOX IN WHICH TO VOTE NO UNION

Section 2, Ninth of the Railway Labor Act vests in the Mediation Board the power to determine disputes concerning the representation of employees. No instructions are laid upon the Board requiring it to proceed in any specific maner, or prohibiting resort to any procedure that it believes will facilitate the

performance of its statutory obligation. The only relevant mandate given to the Board is that—

> If any dispute shall arise among a carrier's employees as to who are the representatives of such employees * * *

then it shall be the Board's duty—

> to investigate such dispute and to certify to both parties * * * the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. * * *

Section 2, Ninth, then grants the Board incidental authority, but it does not, in terms, impose other legal duties. The reason seems plain. Congress intended to give to *the Board alone* full power to make the determination of "who are the representatives of such employees designated and authorized in accordance with the requirements of this Act." *Switchmen's Union* v. *National Mediation Board,* 320 U.S. 297. The phrase "designated and authorized in accordance with the requirements of this Act" is a reference to Section 2, Third, which provides that the employees' representatives shall be designated without interference by a carrier, and also to Section 2, Fourth, which provides that the "majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class * * *."

It is hard to see how any other form of ballot could more directly ask the employees the very question the statute directs the Board to answer. The

statute does not tell the Board to ascertain whether the employees wish to be represented collectively. The statute directs the Board to determine who are the representatives desired by a majority of the class or craft. The proposed ballot follows the words of the statute: it asks every employee to indicate which of the putative representatives he prefers and allows him to write in the name of any representative which has not come to the Board's attention. In order to make the alternatives clear to every employee, the form of ballot promulgated November 6, 1964, also directs itself to the question, not embraced by the statute, what will be the consequence if a majority does not wish to designate a representative. The new form of ballot gives the prominent instruction that any employee who wishes there to be no representative should refrain from making a designation either by not voting or by casting a blank or spoiled ballot.

Not only does the form of ballot proposed conform to the only duty laid upon the Board but the language and legislative history, the consistent administrative interpretation and the policy of the Railway Labor Act show that the Board has no statutory duty to use a ballot with a NO-UNION box.

1. *The Language of Section 2, Ninth shows that the Board is not required to use A Particular Form of Ballot*

Section 2, Ninth, which governs the conduct of representation elections, does not require the Board to use any particular form of ballot. Indeed, the Board is not even required to use a ballot at all. The statute,

after providing that, upon request of either party to a representation dispute, the Board shall investigate such dispute and certify the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, further enacts:

> * * * In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. * * *

The Act thus leaves it to the Board to decide whether to use a secret ballot or some "other appropriate method of ascertaining the names of [the employees'] duly designated and authorized representatives." The Act nowhere specifies any particular form of ballot, and the very generality of the mandate indicates that the Board has broad discretion to determine what form of ballot is most appropriate to effectuate the purposes of the Railway Labor Act.

The legislative history of Section 2, Ninth (which was added to the Act in 1934) supports this view. At the hearings Commissioner Eastman, the draftsman of the 1934 Amendments, was asked a number of questions concerning problems that might arise in connection with the conduct of elections. These included such questions as what the effect would be if a majority of employees failed to participate, and whether, for example, "[i]f only 40 percent of the total number of employees voted and 21 percent voted for a certain representation, that 21 percent then would speak the will of the 100 percent?" Commissioner Eastman's response to all such questions was, in effect, that the proposed amendments did not provide the answers and that these were matters which the Board was to determine in connection with prescribing the procedures for the conduct of elections. See, Hearings on H.R. 7650 (and H.R. 9689), House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess., pp. 34–35.

Congress thus may fairly be said to have left it to the Board's discretion to fill in the procedural details of the elections, including the form of the ballot.

2. *The contemporaneous administrative interpretation, consistently followed for thirty years, shows that Section 2, Ninth does not require a ballot with a "no union" box.*

Since its establishment in 1934, the Board consistently has used a form of ballot which does not provide any space in which employees can vote explicitly for no representation (R. 45, 87). As one of its first

acts, the Board drafted a ballot which provides spaces where the employees can vote not only for the contending organizations but also for any other organization or individual he wants as a representative (*e.g.*, R. 112, 115). The Board selected this type of ballot "to permit the employees to secure some form of representation, as contemplated in the sections of the law quoted above [Section 2, Second and 2, Third]. It leaves to the majority of the employees of any craft or class full freedom to determine who shall be their representative for the purposes of the Act." *Administration of the Railway Labor Act by the National Mediation Board 1934–1957* (G.P.O. 1958), p. 19. This form of ballot, which gives the employees the right not only to choose among the organizations listed on the ballot but also to designate some one else, effectuates the statutory intent that employees are to have complete freedom to select their own representatives (see *infra*, pp. 44–49, 52–54, 56). "In many instances voters take advantage of this provision of the ballot to express their desire to be represented by some organization or individual other than those listed on the ballot. On occasions a majority of eligible voters have designated in this manner their representative for the purposes of the Railway Labor Act and the Board has so certified." *In the Matter of Representation of Employees of the Pan American World Airways, Inc.–Stock Clerks*, Case No. R–3262 (1958), 3 Determination of Craft or Class of the National Mediation Board (G.P.O. 1961), pp. 76, 79.

In the present cases the Board, in rejecting United's request that it provide a ballot containing a space to vote against representation, further explained the reasons for its traditional form of ballot (R. 87):

> * * * the form of ballot presently used was adopted by the Board in 1934 and has been used since that time as the form best designed to ascertain the representation desires of a carrier's employees for the purpose of collective bargaining. The blank line appearing on the present form of ballot affords an opportunity to the voter to vote for some organization or individual other than those named on the ballot, or he may refrain from voting at all if he so chooses. There is no compulsion that he vote for a contestant for representation. Introduction of a "yes" or "no" ballot would contribute to, if it did not actually encourage, an attempt to circumvent the mandate of Congress that representatives be designated by carriers and their employees for the purposes described in Section 2, First and Second of the Railway Labor Act * * *.

Another reason why the Board believes that a ballot providing a space to vote for no representative would contravene the policy of the Act was given in an affidavit by Mr. Francis A. O'Neill, Jr., who has been a member of the Board continuously since 1947 (R. 160). He stated (R. 164): "In the opinion of the National Mediation Board any requirement that the ballot used in a representation dispute be changed to provide a space in which the voters can vote for

no representation will tend to encourage the parties to a representation dispute to resort to self-help rather than to seek the services of the Board in resolving the representation dispute and will result in strikes and unrest in the industries covered by the Railway Labor Act which would not result were the normal form of ballot used."

In the 30 years since its existence, the Board, using this form of ballot, has conducted more than 3400 representation elections (R. 161, 164), or an average of more than 110 a year. In the first year of its existence, when the form of ballot was still novel, it conducted 58 elections. First Annual Report of the National Mediation Board, Table IV, p. 15. In the first ten years of its operations, the Board conducted 711 elections. Tenth Annual Report, Table 5, p. 19. The figures for recent years continue to show a large number of elections. The Board conducted 99 elections in fiscal year 1954 (Twentieth Annual Report, Table 2, p. 20); an average of 113 elections per year during the five-year period 1945–1949 (*ibid.*); and, in the most recent period for which published figures are available, the fiscal year ended June 30, 1963, 44 elections, of which 28 were in the railroad industry and 16 in the airline industry. Twenty-Ninth Annual Report, Table 3, p. 81.

In conducting these elections, the Board has had ample opportunity to test out in practice its original belief that its traditional form of ballot is "best designed to ascertain the representation desires of a carrier's employees for the purposes of collective bargain-

ing" (R. 87). Although "[o]ccasionally, it is suggested that the ballot used by the National Mediation Board does not permit a clear expression by a majority of eligible voters of their representation preference" (*Administration of the Railway Labor Act by the National Mediation Board 1934–1957,* pp. 18–19), the Board's experience has been to the contrary.

As we have noted (*supra,* pp. 21–25), both the language and the legislative history of the Act demonstrate that Congress intentionally left it to the discretion of the Board to determine the most appropriate procedures for conducting representation elections under Section 2, Ninth, including whether or not to use a ballot and, if so, what form it should take. The Board's settled view, which it has consistently applied during the 30 years that it has been administering Section 2, Ninth, has been that a ballot which does not provide any space for voting for no representation best effectuates the statutory policies. That conclusion thus involves an expert judgment on a matter that "has been assigned primarily to the agency created by Congress to administer the Act" (*National Labor Relations Board* v. *Hearst Publications,* 322 U.S. 111, 130). The Board's consistent practice is entitled to "peculiar weight [because] it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new." *Norwegian Nitrogen Co.* v. *United States,* 288 U.S. 294, 315; see, also, *United States* v.

American Trucking Ass'ns, 310 U.S. 534, 549; *Federal Trade Commission* v. *Mandel Brothers*, 359 U.S. 385, 391. It also involves a practice continued without legislative question, for over 30 years.

3. The proposed form of ballot will effectuate the policies of the Act

The district court held that the form of ballot which the Board *then* proposed to use in the election at United was unlawful because it failed to give employees who wished to oppose any collective representation an opportunity to express their desire. The opportunity was present because failure to cast a valid ballot would be treated as the equivalent of a vote against representation; but it could be argued that this method of opposing any representation was insufficiently publicized because the Board did not announce it on the ballot and employees were unlikely to read the lengthy rules for conducting elections in which it appeared. The ground for criticism has been eliminated. The Board, upon considering the representation of the Solicitor General that in his opinion the old ballot was unfair, promulgated a new form of ballot which, at the very moment of voting, plainly advises each and every employee how to express a preference for no collective bargaining. There is nothing in the present procedure that requires employees to designate a representative or hides the opportunity to reject all the contending unions.[8]

[8] The district court cited (R. 152) as a reason for requiring a NO UNION box on the ballot a hypothetical case in which 4,000 employees voted for Union A, 3,000 employees voted for

If the current form of ballot is to be attacked, it can only be on the ground that it somehow favors the designation of a union representative over the rejection of all collective bargaining. Whether that is true and, if so, how great is the advantage are questions of fact for the expert administrative body to decide. It is far from obvious that it is appreciably easier to mark the box designating one of the unions than it is to cast a blank ballot, spoil the ballot, or cast no vote. There is no obviously great psychological advantage to the unions in having boxes on the ballot in which one can be designated as representatives whereas an em-

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Union B and 5,000 failed to vote. The court expressed the fear that, if the present form of ballot were used, that would be a valid election and Union A would be certified. We submit that the example raises questions concerning the conclusions to be drawn from the facts, not doubts about the propriety of the ballot. If refraining from voting is a widely-known method of opposing all representation, then possibly the failure of 5,000 employees to vote should be taken into account in deciding whether Union A has been designated by a majority. At the same time it may be argued that the supporters of Union B voted for collective bargaining and therefore may be taken to prefer Union A to no union. Such questions concerning the conclusions to be derived from various tallies, the conduct of run-off elections and what constitutes a majority have been the subject of frequent consideration under both labor acts. See, *e.g.*, *National Labor Relations Board* v. *Standard Lime & Stone Co.*, 149 F. 2d 435 (C.A. 4), certiorari denied, 326 U.S. 723; *Radio Officers' Union* v. *National Mediation Board*, 181 F. 2d 801 (C.A.D.C.); *Aluminum Company of America*, 12 NLRB 237; *Coos Bay Lumber Company*, 16 NLRB 476; *R. K. Le Blond Machine Tool Co.*, 22 NLRB 465; 2d Ann. Rep., National Mediation Board (1936), p. 11; 14th Ann. Rep., National Mediation Board (1948), pp. 8–9; 16th Ann. Rep., National Mediation Board (1950), pp. 20–21; 29th Ann Rep., National Mediation Board (1963), p. 36.

ployee who opposes collective bargaining expresses his will by following the instruction, plain on the face of the ballot, instead of marking a box. We may assume, however, that there is some advantage, indeterminate in degree, because the form of ballot seems to carry some slight assumption that the employees will want to designate one of the unions. That advantage, we submit, is no more than the statute itself contemplates.

(a) The Railway Labor Act, in general, and Section 2, Ninth, in particular assume that in the normal course of events employees will designate representatives to act on their behalf in resolving disputes and arranging terms and conditions of employment. The proposed form of ballot, if it does that, certainly does no more. Neither the Act nor the ballot requires the designation of representatives; and the instruction on the ballot makes the absence of any such requirement clear.

Indeed, the form of the ballot corresponds so closely to the language of the Act that invalidating the ballot would virtually convict the Board of violating the Act by asking employees the very question upon which the statute directs the Board to ascertain their wishes. A dispute arose among United's employees "as to who are the representatives of such employees" because both BRC and IAM claimed to be the representative. Section 2, Ninth, required the Board to certify "the name or names of the individuals or organizations that have been designated and authorized to represent the employees" by a majority in the craft or class. The statute says nothing about asking the

employees whether a majority wish to have a representative. The Board, following the statute, put the question to each employee whether he wished to designate BRC or IAM, the only contending claimants, with a view to certifying whichever, if either, the majority might designate.

Whatever presumption that procedure created in favor of designation is implicit in the statute itself.

(b) The language of Section 2, Ninth, assuming though not requiring[9] the designation of representatives by a majority of the employees, reflects a Congressional policy of encouraging the development of collective bargaining.

Congress recognized that collective bargaining is the appropriate and usual method for settling labor disputes between carriers and their employees, and intended to encourage the latter to select representatives through whom they could engage in such negotiations. Section 2, Second, *supra*, p. 4, provides:

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[9] Commissioner Eastman so testified. Hearings on H.R. 7650 (and H.R. 9689), House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess., p. 57.

In the district court government counsel stated (R. 144–145) that the Board "has taken the position that the language of the statute requires a representative" and that employees "just don't have a right to vote for no representation." But the Board's consistent practice of refusing to certify a representative unless a majority of all the employees in the craft or class (as distinguished from a majority of those voting) vote for representation would seem to refute that statement. In any event, the Board presently does not hold the views that government counsel ascribed to it in the district court—as its recent action in changing the form of the ballot so clearly demonstrates (see *supra*, pp. 13–14, 23).

"All disputes between a carrier or carriers and its or their employees *shall be considered,* and, if possible, decided, with all expedition, in conference *between representatives designated* and authorized so to confer, respectively, by the carrier or carriers and *by the employees* thereof interested in the dispute." (Emphasis added.) Section 2, Fourth (*supra,* p. 5) similarly contemplates collective representation, since it gives employees the "right" to "organize and bargain *collectively* through *representatives of their own choosing,*" with the majority having the authority to determine "who shall be the representatives" (emphasis added). Section 2, Sixth (*supra,* pp. 5–6), reflects the same Congressional approval of collective representation. It provides that where there are disputes arising out of grievances or out of the interpretation or application of agreements, "it shall be the duty of the *designated representative* * * * of such carrier * * * and *of such employees*" to confer within ten days after notice of such dispute. (Emphasis added.) Finally, the election machinery of Section 2, Ninth, is designed to determine "who are the representatives of such employees" and to "ascertain * * * the names" of the employees' representatives.[10]

[10] See also Section 6 (45 U.S.C. 156), providing that "Carriers and *representatives of the employees* shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference *between the representatives* of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of such notice. * * *" (Emphasis added.)

Commissioner Eastman pointed out during the hearings that "employees cannot deal on equal terms with the employer unless they organize. They must deal collectively rather than individually." Hearings on S. 3266, Senate Committee on Interstate Commerce, 73d Cong., 2d Sess., p. 146. He further stated that "The purpose [of the bill] is to protect collective bargaining * * *." *Id.*, p. 148.

In *Virginia Ry.* v. *System Federation No. 40,* 300 U.S. 515, 547, this Court, referring to "the plain purpose made manifest throughout the numerous provisions of the [Railway Labor] Act," stated: "Its major objective is the avoidance of industrial strife, by conference between the authorized representatives of employer and employee." The Court pointed out (p. 548) that the statute was "aimed at securing settlement of labor disputes *by inducing collective bargaining* with the true representative of the employees * * *" (emphasis added).

Similarly, in *Machinists* v. *Street,* 367 U.S. 740, the Court, after pointing to the powers which Congress gave railway labor unions under the Act and the provision whereby national unions selected the 18 employee members of the National Railroad Adjustment Board,[11] stated (p. 760):

> In sum, in prescribing collective bargaining as the method of settling railway disputes, in conferring upon the unions the status of exclusive representatives in the negotiation and administration of collective agreements, and in giving them representation on the statutory

[11] Section 3, First (a) (45 U.S.C. 153, First (a)).

> board to adjudicate grievances, Congress has given the unions a clearly defined and delineated role to play in effectuating the basic congressional policy of stabilizing labor relations in the industry. "It is fair to say that every stage in the evolution of this railroad labor code was progressively infused with the purpose of securing self-adjustment between the effectively organized railroads and the equally effective railroad unions and, to that end, of establishing facilities for such self-adjustment by the railroad community of its own industrial controversies * * *. The assumption as well as the aim of that Act [of 1934] is a process of permanent conference and negotiation between the carriers on the one hand and the employees through their unions on the other."

Thus, unlike the National Labor Relations Act which, as amended in 1947, expressly preserves to employees the right to refrain from collective bargaining (Section 7, 29 U.S.C. 157), the Railway Labor Act has no comparable provision. While, as we have noted, such employees are not required to engage in collective bargaining, the basic plan and purpose of the latter Act is to encourage and facilitate employees in selecting representatives for that purpose.[12] To the extent that the proposed form of

[12] The district court noted (R. 154–155) that in conducting representation elections the National Labor Relations Board since 1937 has used a ballot which provides a place for employees to vote against any representative But this fact does not establish that the NMB, operating under a statute which, unlike the National Labor Relations Act, reflects a Congressional purpose to encourage and facilitate the selection of representatives, was required to use the same form of ballot in conducting its elections.

ballot has that tendency, it corresponds to the policy of the Act.

B. THE MEDIATION BOARD'S DETERMINATION THAT THE FORM OF BALLOT NOW PRESCRIBED WILL ENABLE IT TO DETERMINE THE QUESTION OF REPRESENTATION IN ACCORDANCE WITH SECTION 2, NINTH IS NOT SUBJECT TO JUDICIAL REVIEW

In *Switchmen's Union* v. *National Mediation Board,* 320 U.S. 297, this Court construed the Railway Labor Act as precluding judicial review of the Board's certification of a collective bargaining representative under Section 2, Ninth. Although the dispute in *Switchmen's Union* involved a question of statutory interpretation—whether the Act permitted the division of crafts of a single carrier into smaller units for collective bargaining purposes—and although it was asserted that the NMB's negative answer to that question violated the Act, the Court held that the Board and not a court was the tribunal intended finally to resolve such questions when they arose in a certification proceeding. The Court stated, 320 U.S. at 300: "We do not reach the merits of the controversy. For we are of the opinion that the District Court did not have the power to review the action of the National Mediation Board in issuing the certificate." Examining the statute and its history, the Court concluded (p. 305): "the intent seems plain—the dispute was to reach its last terminal point when the administrative finding was made. There was to be no dragging out of the controversy into other tribunals of law."

The Court took particular note of the sensitive and volatile nature of representation contests among em-

ployees; and of the extreme care Congress had taken to define the Board's limited role in such disputes. It concluded that "[w]here Congress took such great pains to protect the Mediation Board in its handling of an explosive problem, we cannot help but believe that if Congress had desired to implicate the federal judiciary and to place on the federal courts the burden of having the final say *on any aspect* of the problem, it would have made its desire plain" (320 U.S. at 303, emphasis added).[13] The Court also relied upon the fact that, although the Act provides for judicial review of rulings of other agencies, such as decisions of the National Railroad Adjustment Board (Section 3, First (p)) and of arbitration boards (Section 9), it makes no provision for judicial review of NMB determinations.[14]

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[13] The Court's reference to the pains taken by Congress to protect the NMB in explosive situations, was to the provision in Section 2, Ninth, giving the Board the option of appointing a committee of three neutral persons who would designate the employees who were eligible to participate in the election. This provision was inserted in the 1934 amendments at the suggestion of the Chairman of the Board of Mediation (the NMB's predecessor), because of concern that if the Board had to decide heated disputes between unions as to eligibility to vote (*i.e.*, craft questions), the Board's role as a mediation agency might be adversely affected. See, *e.g.*, Hearings on S. 3266, Senate Committee on Interstate Commerce, 73d Cong., 2d Sess., pp. 134–135.

[14] The legislative history of the 1934 amendments to the Act confirms the inference that, by providing for judicial review in other areas but omitting any provision for review of NMB determinations, Congress intentionally sought to preclude judicial review of the latter. See, Hearings on H.R. 7650 (and H.R. 9689), House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess., pp. 41, 59–61.

The present case is well within the *Switchmen's Union* doctrine even if that case is limited by *Leedom* v. *Kyne*, 358 U.S. 184, 188. Certainly, the Mediation Board here has not acted "contrary to a specific prohibition in the Act" (*id.* at 188); there is no specific provision requiring a "No Union" box on the ballot as opposed to other methods of indicating opposition to union represenation. Nor can it be said that the Mediation Board acted "in excess of its delegated powers." The Act delegates it power, in the event of a dispute, to determine the names of the represenatives designated or authorized by a majority of the employees in the craft or class. That is all that the Board has sought to do.

The very arguments attacking the proposed form of ballot indicate that the questions that ABNE and United sought to raise are not open to judicial review. Unable to point to any specific prohibition which the Board violated, they are forced to argue in terms of broad generalities contrasting what they say will be the effect of the proposed form of ballot upon the employees with what they say are the conclusions to be drawn from the general provisions and policies of the Act. It is the essence of the *Switchmen's Union* doctrine that such questions are for the Mediation Board rather than the courts. The effectiveness of the proposed ballot in obtaining a free expression of choice, the way it will affect the employees who are to vote in the election, the usefulness of the ballot in emphasizing real as opposed to theoretical choices, are all questions for the agency to determine upon

the basis of its experience and knowledge of the problem. Congress also committed to the Board the responsibility for particularizing and applying to concrete situations the policies and general instructions contained in the Act. We submit that for the reasons stated above the proposed form of ballot will, in fact, effectuate the policy of the Act (see pp. 30–37, *supra*), but whether we be right or wrong in that respect, certainly the Board could reasonably conclude that the ballot was an appropriate method of carrying out the task committed to it by Section 2, Ninth.

Since the Board's proposed method of determining the names of any representative designated by a majority of the employees was not an unreasonable construction of its mandate, in the light of the policies of the Act, there is no room for judicial intervention. Only last Term this Court indicated that the *Kyne* exception is a "narrow" one and that "district court review of orders entered in certification proceedings" may be had only in "extraordinary circumstances." *Boire* v. *Greyhound Corporation*, 376 U.S. 473, 474–480, 481.[15]

[15] Until the decision in the present cases, the lower federal courts repeatedly and consistently had applied *Switchmen's Union* to bar judicial review of determinations of the NMB under Section 2, Ninth. See, *e.g.*, *Radio Officers' Union* v. *National Mediation Board*, 181 F. 2d 801 (C.A. D.C.); *Rose* v. *Brotherhood of Railway and Steamship Clerks*, 181 F. 2d 944 (C.A. 4), certiorari denied, 340 U.S. 851; *Rutas Aereas Nacionales* v. *Edwards*, 244 F. 2d 784 (C.A. D.C.); *UNA Chapter, Flight Engineers' International Ass'n* v. *National Mediation Board*, 294 F. 2d 905 (C.A. D.C.), certiorari denied, 368 U.S.

Thus to limit judicial review furthers the aim of the Railway Labor Act to bring about prompt settlement of labor disputes in the transportation industry. Section 2(4) (*supra*, p. 4) specifies that one of the purposes of the Act is "to provide for the prompt * * * settlement of all disputes * * *." Section 2, Ninth furthers this purpose by making it the Board's duty to investigate a representative dispute and "to certify to both parties, in writing, *within thirty days* after the receipt of the invocation of its services the name or names of the * * *" representatives

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956; *Air Line Stewards and Stewardesses Association* v. *National Mediation Board*, 294 F. 2d 910 (C.A. D.C.), certiorari denied, 369 U.S. 810; *Flight Engineers' Int'l Ass'n* v. *Eastern Air Lines*, 311 F. 2d 745 (C.A. 2); *WES Chapter, Flight Engineers' Int'l Ass'n* v. *National Mediation Board*, 314 F. 2d 234 (C.A. D.C.).

In the *Rose* case, *supra*, the court refused to consider the merits of the same attack on the form of the ballot made in the present cases. *Rose* was a suit by a union certified by the Board seeking to compel a carrier to bargain with it. A group of employees sought to intervene on the ground, *inter alia*, that the union had no right to represent them "because the ballot provided for the secret election did not afford the employees an opportunity to vote against collective bargaining * * *." 181 F. 2d at 945. In an opinion by Judge Parker, the court of appeals upheld the dismissal of their petition to intervene, on the ground that under *Switchmen's Union* the Railway Labor Act gave the NMB exclusive and unreviewable jurisdiction over the certification of bargaining agents and the determination of bargaining units. See 181 F. 2d at 946. See also, *Droggos* v. *National Mediation Board*, 227 F. Supp. 61 (N.D. Ohio), where the court in refusing to enjoin the holding of an election among airline employees because of the asserted invalidity of the ballot, disagreed with the present cases and followed *Rose*.

selected (emphasis added). See also, *Switchmen's Union, supra,* 320 U.S. at 303, where the Court quoted Commissioner Eastman's statement that one of the objectives of the Act was to "get the matter settled."

In the present cases, more than two years have elapsed since the Brotherhood invoked the Board's services in the summer of 1962. Although the Board then found that a representation dispute existed, that dispute has not been resolved. There has been no election, and no certification of any representative or Board determination that a majority of the employees involved do not want representation. More than half of this delay is attributable to the court proceedings challenging the form of the ballot and the Board's refusal to redetermine the appropriate craft or class.

If this Court upholds the Board's actions, by the time an election is held there will have been a delay of almost three years. The statute, however, requires the Board to investigate the dispute and certificate the representative (if one is selected) within 30 days after it receives the request for investigation. The present cases thus dramatically illustrate the serious delays that are likely to result if the courts are permitted to enjoin the Board from conducting an election because of alleged deficiencies in the ballot or other alleged procedural irregularities—delays which, as we have shown, Congress sought to avoid in the Railway Labor Act.

II

A CARRIER HAS NO RIGHT TO PARTICIPATE IN A REPRESENTATION PROCEEDING UNDER SECTION 2, NINTH OF THE RAILWAY LABOR ACT

United sought to participate in the Board proceedings with respect to two issues: (1) the form of the ballot, and (2) the craft or class within which the representation election would be conducted. The district court gave no reasons for dismissing United's suit to enjoin the election (R. No. 139, p. 44). The court of appeals assumed that such dismissal was because United lacked standing (R. 177), and affirmed on the ground that its affirmance of the order in the *ABNE* case "affords the relief concerning the form of the ballot which United sought," and therefore made it unnecessary to decide the "close question" of United's standing to maintain its suit (R. 177). The district court's order in the *ABNE* case, however, did not give United all the relief it sought. Although the court in substance required the Board to use a ballot which provides a space for voting for no representation, the order gave United no relief with respect to its claim that it was entitled to a hearing before the Board on the appropriate craft or class.[16] Consequently, we agree with United that the question whether a carrier has a right to participate in employee representation proceedings under Section 2,

[16] As we show below, pp. 58–59, it is also uncertain whether the order in *ABNE* requires the Board to give ABNE a hearing on the craft or class issue.

Ninth of the Act, is presented for decision in this litigation.

United argues that it has a right to participate in a Section 2, Ninth proceeding because (1) it has an "economic interest" in "the composition or structure of a collective bargaining unit of its employees." (Pet. No. 139, p. 13) and (2) since it must bargain with the certified representative, it has an interest in insuring that the certified representative is the " 'true representative' of the majority of the employees" (*id.*, pp. 24, 26). Our answer is that the Railway Labor Act not only gives the carrier no right to be heard but affirmatively excludes it from participation. That course was the logical consequence of the substantive policy of the Railway Labor Act; to require carriers to bargain with representatives freely selected by a majority of *any* craft or class of employees (Section 2, Fourth). Unlike the National Labor Relations Act which provides for a governmental determination of an "appropriate" bargaining unit, the Railway Labor Act leaves determination of the units in which they will organize exclusively to the employees, provided only that there be a majority of an identifiable craft or class. The Mediation Board has a role only "[i]f any dispute shall arise among a carrier's employees" as to the identity of the representative.

While determining what organization is the majorityy choice requires the Board to resolve disputes concerning the constituency, it does not alter the fundamental substantive policy of giving the employees the right to select the form of employee

organization, *i.e.* the composition of the group which will bargain as a collectivity. Thus, the rule denying employers a right to be heard in representation proceedings is simply the procedural corollary of the substantive rights conferred upon the employees by the Railway Labor Act. The decisions and principles determining standing to be heard under other regulatory statutes in controversies in which the intervenor has a legally recognized interest are inapplicable under this statute, which confers the substantive right involved in the hearing upon the employees alone.

We now show that this interpretation of the Railway Labor Act is supported by the plain meaning of the words, the legislative history and the original and settled interpretation of the Mediation Board.

A. THE PLAIN MEANING OF THE WORDS SHOWS THAT A CARRIER HAS NO RIGHT TO PARTICIPATE IN A REPRESENTATION PROCEEDING

Section 2, Fourth of the Railway Labor Act contains the key provisions with respect to the choice of representatives and composition of the collectivity or bargaining unit for which the representatives will act:

> Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this [Act].

The second sentence, especially the reference to the "majority of *any* craft or class," makes it plain that the forms of organization, *i.e.*, the type and juris-

diction of the labor union, are to be determined by the employees alone without outside interference. Were there doubt upon the point it would be removed by a proviso in Section 1, Fifth, which provides—

> That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

At the time of the 1934 amendments, as today, the Interstate Commerce Commission maintained an elaborate occupational classification of railway employees. The proviso makes it clear that the classes or crafts according to which railway employees are to be organized for purposes of collective bargaining are to be determined "by their voluntary action" and not by government classifications. Similarly, the reference to "the jurisdiction * * * of such employee organizations" refers to the groups which they claim the right to organize and for which they will bargain.

The result is that once a majority of the employees in any self-determined group that can fairly be described as a "craft or class" determines who will be its bargaining representative, the carrier-employer has an absolute duty to bargain with that representative in behalf of the group regardless of whether the carrier or anyone else thinks that the group is an in-

appropriate bargaining unit. The union may maintain a suit in equity to compel the carrier to perform its statutory duty. *Virginian Ry. v. System Federation No. 40*, 300 U.S. 515. There is no provision, however, for any administrative determination concerning the appropriateness of the bargaining unit. That is because its composition is left entirely to the wishes of the employees, provided that they can fairly be described as "any craft or class."

Section 2, Ninth takes account of the fact that there may be differences among employees with respect to voluntary self-organization and the selection of representatives. In such disputes there often is rivalry not only concerning the choice of representatives but also concerning the scope of the crafts or classes in which the employees will organize for the purposes of collective bargaining. In the latter event the Mediation Board will have to define the constituency from which a majority representative will be chosen. Such a controversy, however, is a conflict between rival groups of employees over which group will determine how the employees will exercise the employee right to determine the composition of the collectivity with whose representatives the carrier must bargain. Indeed, even at this point the statute says nothing about the Board's determining the appropriate bargaining unit. The only power it is given is to decide "who may participate in the election" (Section 2, Ninth). And obviously, there is no occasion for the carrier to be given a hearing in a controversy between rival groups of employees over the exercise of an employees' right.

The words of the Act pertaining to the procedure in representation proceedings under Section 2, Ninth reflect the fundamental principle that it is the employees who have the substantive legal right to determine the composition of the collectivity by their voluntary action, so that the quesion is none of the carrier's concern. Section 2, Ninth gives the Board no authority to adjudicate representation disputes between carriers and employees, but only such disputes among the employees themselves, and then only at the latter's request. In adjudicating such employee disputes, the Board's function is limited to acting as a referee and to finding as a fact whom the employees want to represent them. See *Switchmen's Union* v. *National Mediation Board*, 320 U.S. 297, 304–305.

Section 2, Ninth provides that "[i]f any dispute shall arise *among a carrier's employees* as to who are the representatives of such employees * * *, it shall be the duty of the Mediation Board, upon request of *either party to the dispute*, to investigate such dispute and *to certify to both parties* * * * the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, *and certify the same to the carrier*" (emphasis added). The words make it plain that the carrier has no standing to invoke the Board's services and that the carrier is not a "party"; indeed, the draftsman placed the words "carrier" and "party to the dispute" in virtual opposition. As Commissioner Eastman explained at the Congressional hearings, "if an organization claims to represent

the employees and appears with reference to any labor dispute and *there are no employees contesting its right* to appear for them, there would be no need for [the] machinery [of Section 2, Ninth] to determine the matter." Hearings on H.R. 7650 (and H.R. 9689), House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess. p. 56 (emphasis added).

Similarly, with regard to craft or class determinations, it is only where there is a dispute among employees as to the majority representatives that the machinery of Section 2, Ninth comes into operation. The Railway Labor Act leaves it to employees to determine along what lines they shall organize. As this Court pointed out in *Switchmen's Union, supra,* 320 U.S. at 301, the Board makes craft or class determinations only as an incident to resolving controversies among employees as to their representatives. Even in such cases the statute avoids such phrases as "craft or class" and "appropriate bargaining unit." The Board is simply authorized to designate, when it holds an election, "who may participate in the election." The choice of words emphasizes the policy of leaving the composition of bargaining units to the employees themselves except where strictly necessary to the machinery for resolving their disagreement.

In these respects, the basic design of the Railway Labor Act is quite different from that of the National Labor Relations Act. An employer subject to the National Labor Relations Act is under no duty to bargain with employee representatives unless they have been selected by a majority "in a unit appropri-

ate for such purposes"; and the employer always has the right to challenge the appropriateness of the unit (Section 9(a)). The National Labor Relations Board is authorized to decide in each case "the unit appropriate for the purposes of collective bargaining." Section 9 of the National Labor Relations Act as amended in 1947 (29 U.S.C. 159), empowers the National Labor Relations Board to adjudicate representation disputes between employers and employees as well as among employees. Section 9(c)(1)(B) specifically authorizes both employers and employees or their representatives to file with the Board a petition for a representation election. In determining whether a question of representation affecting commerce exists, the Board is directed to apply the same principles no matter who files the petition (Section 9(c)(2)). The National Labor Relations Act thus gives the employer a statutory privilege to insist upon an "appropriate unit" and consequently a far different role in representation proceedings than under the Railway Labor Act.

Further support for the view that Congress intended to deny carriers any part in the proceedings by which employee representatives are chosen is found in the provisions of the Act designed to protect employees from carrier influence or interference. Section 2(3) (*supra*, p. 4) states that one of the purposes of the Act is "to provide for the complete independence of carriers and of employees in the matter of self-organization * * *." Section 2, Third (*supra*, p. 4) provides that representatives "shall

be designated by the respective parties *without interference, influence,* or coercion by either party over the designation of representatives by the other; and neither party shall in *any way interfere with, influence,* or coerce the other in its choice of representatives" (emphasis added). Section 2, Ninth directs the NMB to conduct representation proceedings "in such manner as shall *insure* the choice of representatives by the employees *without interference, influence,* or coercion exercised *by the carrier*" (emphasis added).

While allowing carriers to participate in employee representation proceedings may not cause "coercion," it may result in "interference" or "influence." For example, assume that two unions are seeking to represent a large group of employees; that union A asserts that there should be two crafts or classes in which separate elections should be held, since it believes that it has a majority in one but perhaps not in the other; and that union B, which believes that it represents a majority of the entire group but not of one of the subdivisions, insists that the entire group should be a single craft or class. To permit the carrier to participate and support A's position on this issue could influence the employees to choose union A as their representatives, and might even constitute interference in the selection process. Similarly, a carrier which is permitted to participate in the representation process in order to urge that the ballot contain a NO UNION box, would be influencing employees to vote against representation. As we show below, one of the major purposes of the 1934 amend-

ments was to eliminate all carrier influence in the processes by which employees selected their representatives.

B. THE LEGISLATIVE HISTORY SHOWS THAT A CARRIER HAS NO RIGHT TO PARTICIPATE IN A REPRESENTATION PROCEEDING

The language of the statutory provisions discussed above is the result of experience followed by mature deliberation. While the Railway Labor Act as enacted in 1926 prohibited carriers from interfering with their employees' selection of a collective bargaining representative, it contained no machinery for enforcing this provision. During the Congressional hearings on the 1934 Amendments it was brought out that carriers did interfere with the employees' choice of representatives in various ways, including establishing "company unions," limiting employees' freedom of choice in their selection of representatives as a condition for employment, discharging or threatening to discharge employees joining a union, providing financial assistance or other support for favored unions, refusing to recognize as collective bargaining representatives persons not in the carrier's employ, and participating in the proceedings in which employees selected representatives. See, Hearings on S. 3266, Senate Committee on Interstate Commerce, 73d Cong., 2d Sess., pp. 13, 28–29, 36–37, 51–52, 149–151, 164–165; Hearings on H.R. 7650 (and H.R. 9689), House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess., pp. 23–26, 32–33, 34, 38–39, 78–79, 85, 92, 110–113; Hearings on H.R. 9861, House Committee on Rules, 73d Cong., 2d Sess., pp. 10–11, 15.

One of the two chief objectives of the 1934 Amendments, 48 Stat. 1186, was to end those practices by strengthening the prohibitions against carrier interference and influence in representative proceedings. Senate Hearings, *supra,* pp. 28–30; House Hearings, Committee on Interstate and Foreign Commerce, *supra,* pp. 22, 43, 78; House Hearings, Rules Committee, *supra,* pp. 10, 20–21; Senate Report No. 1065, 73d Cong., 2d Sess., pp. 1–2.[17]

The legislative history indicates that carrier participation in the proceedings by which employees selected their representatives was one of the practices which the 1934 Amendments sought to preclude. Commissioner Eastman, the draftsman of the 1934 Act, testified that a fundamental principle of the Act was that carriers "shall in no way interfere" with their employees' choice of representatives, either directly "or indirectly" (Senate Hearings, *supra,* p. 12); that employees should be just as free from interference in selecting their representatives as carriers are in selecting theirs (*id.,* p. 148); that mere "advice" by the carrier might be "influence" (*id.,* p. 149); that the prohibition in Section 2, Third, against either party interfering with or influencing the designation of representatives by the other meant that the parties should be "wholly independent of each other" with respect to selecting collective bargaining representatives (House Hearings, Committee on Interstate and Foreign Commerce, *supra,* p. 22); and that the car-

[17] The other major objective was to create machinery for the resolution of so-called minor disputes or grievances.

rier "ought not to be the ones to decide what is for their [employees'] good" (*id.*, p. 24).

Mr. George M. Harrison, the President of the Brotherhood of Railway Clerks and the spokesman for the so-called 21 standard railway labor unions, testified before the Senate Committee that one change made by the bill was that (Senate Hearings, *supra*, p. 29):

> * * * it provides in connection with representatives that, should there be a controversy as to who should represent the men, the board of mediation shall handle the selection of representatives. *That is one reason, today, why men cannot get true representations, because the carrier participates in the conduct of the election* * * * [emphasis supplied].

In the House hearings, Mr. Harrison similarly pointed out that a problem under the earlier Act which the 1934 bill was intended to correct was the practice of employer participation in representation proceedings before the Board of Mediation (House Hearings, Committee on Interstate and Foreign Commerce, *supra*, pp. 78–79):

> So, this bill seeks to supply that deficiency in the Railway Labor Act in respect to that matter and I might best give the general experience, by citing a typical example of that situation today:
>
> The employees on a particular railroad will wish to affiliate with one of the standard railroad labor organizations. After they take membership and authorize the standard organization to represent them, then a formal re-

quest is filed with the railway management that the designated organization has been authorized by a majority of the employees involved to represent them in all matters affecting their wages and working conditions. The general reply from management is that, "We have an association on our property with which we have an agreement and we have no information that the employees have changed their minds about representation by that association".

And, therefore, they generally decline to meet the representatives of the organization which the employees have subsequently designated to speak for them.

The next move then is to take that controversy to the United States Board of Mediation and a mediator is generally assigned in an effort to persuade management to recognize the true representatives of the employees. *Generally in those proceedings a question comes up as to who shall vote in the election to determine the representatives and, most generally, that question is raised by the opposing association or representatives of management, for one, and only one purpose, of preventing a determination of that issue.*

* * * * *

So, this act is designed to take care of that situation by providing that, if any controversy arises among the employees as to who are their representatives and that controversy is carried to the Board of Mediation, the Board of Mediation shall investigate that dispute and certify to the parties who are the legally designated representatives * * * [emphasis added].

The fundamental purpose to allow employees to determine the forms of union organization, *i.e.* the collectivity for which union representatives might bargain, as well as the identity of the representatives, without any form of interference or influence on the part of carriers, was also brought out in the consideration of the proposed proviso to Section 1, Fifth, which provides that the ICC occupational classifications shall not limit the crafts according to which railway employees may be organized "by their voluntary action," and that nothing in the Act shall limit "the jurisdiction or powers of such employee organizations." Mr. Harrison pointed out that the proviso gave "organizations of employees * * * absolute freedom under this bill to determine and to define the crafts * * *." Hearings on H.R. 7650 (and H.R. 9689), House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess., p. 90.

Nowhere in the House or Senate Committee Hearings, in the House or Senate Committee Reports, or in the debates on the floor of Congress on the 1934 Amendments,[18] was it suggested or even intimated that carriers could still participate in a proceeding conducted pursuant to Section 2, Ninth.

C. THE ORIGINAL AND LONG-CONTINUED ADMINISTRATIVE INTERPRETATION SHOWS THAT A CARRIER HAS NO RIGHT TO PARTICIPATE IN A REPRESENTATION PROCEEDING

The National Mediation Board, which the 1934 Amendments established as the successor to the Board of Mediation that previously had administered the

[18] 78 Cong. Rec. 11710–11720, 12369–12376, 12388–12398, 12400–12402, 12549–12555.

Act, from the beginning interpreted the 1934 Amendments as changing the prior practice under which carriers had participated in representation proceedings. In its First Annual Report (1935) the NMB stated (p. 4):

> (a) *Representation disputes—Elections.*—In selecting representatives to deal with the management, disputes often arise among employees as to what organization they desire to represent them; and, *because employers have participated in such disputes favoring one organization or another,* bitter conflicts have often been precipitated. Section 2, ninth, of the amended Railway Labor Act provides an effective method of settling such disputes peacefully. If such a dispute arises among employees, it is the duty of the National Mediation Board, on request of either party, to investigate and to certify in writing to the parties and to the carrier the names of the individuals or organizations that have been designated and authorized to represent the employees. In such an investigation the Board may take a secret ballot, "or utilize any other appropriate method * * * as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier." Thus *the management is eliminated, as a party, from any such controversy.* * * * [Emphasis added.]

Since that time the Board consistently has construed the 1934 Amendments as precluding carrier participation in representation proceedings under Section 2, Ninth. See, *e.g.,* 28th Ann. Rep., National

Mediation Board (1962) pp. 31–32; *Administration of the Railway Labor Act by the National Mediation Board 1934–1957*, p. 4; Twenty-ninth Annual Report of the National Mediation Board, p. 4; R. 38, 77–78, 86.

In the light of the statutory language and design and the legislative history of the Railway Labor Act, we submit that the Board's settled interpretation of the Act as precluding carrier participation in proceedings under Section 2, Ninth is a reasonable one and entitled to stand. The Board, which has conducted more than 3400 representaton elections since it was established in 1934 and has had the benefit of its predecessor's experience in administering the Act when carrier participation was allowed, is in the best position to evaluate the effect of such participation upon the free exercise by employees of their right to select their representatives.

III

A DISTRICT COURT MAY NOT ENJOIN THE NATIONAL MEDIATION BOARD FROM CONDUCTING AN ELECTION ON THE GROUND THAT THE BOARD SHOULD HAVE GRANTED THE REQUEST OF A GROUP OF EMPLOYEES OPPOSED TO ANY COLLECTIVE REPRESENTATION TO REDETERMINE, OR HOLD A HEARING ON, THE COMPOSITION OF THE ELECTORATE

It is not clear whether the order of the district court bars the Board from conducting an election without first holding a hearing on, or redetermining, the constituency in which the election would be conducted. The order provided (R. 171):

> * * * the plaintiff's request that the Board shall conduct a hearing relating to the ques-

> tion of the appropriateness of class or craft of employees among whom the election was to be held, at which hearing the plaintiff could be heard as a party in interest, shall be and the same is hereby remanded to the Board for further consideration in the light of the Court's conclusion that the Railway Labor Act * * * gives employees a right to have a ballot on which they may express a preference for no collective bargaining representation.

In terms, the order does not require the Board to hold a hearing. It merely directs NMB further to reconsider ABNE's request for one in the light of the court's holding that the ballot must give employees a space to vote for no representative. ABNE itself so interprets the order (Br. in Opp. 15), and that interpretation is consistent with the court's ruling that NMB craft or class determinations are unreviewable (R. 141, 155). If the order does not stay the election, the Board does not challenge it.

If, on the other hand, the order requires the Board to hold a hearing on, or to redetermine, the appropriate craft or class before conducting the election, it should be reversed.

The Board's refusal to hold a hearing on the constituency in which the election would be conducted did not constitute reviewable error. As this Court pointed out in *Switchmen's Union* v. *National Mediation Board, supra,* 320 U.S. at 304, the Board, unlike the Committees appointed by it, is not required to hold hearings in connection with Section 2, Ninth proceedings. Whether or not to hold a hearing is,

under the Act, a matter within the Board's discretion; and the Board's refusal to hold hearings in employee representation proceedings has been held unreviewable. *Cf. Air Line Stewards and Stewardesses Association* v. *National Mediation Board*, 294 F. 2d 910 (C.A. D.C.), certiorari denied, 369 U.S. 810; *Ruby* v. *American Airlines, Inc.*, 323 F. 2d 248, 255 (C.A. 2), certiorari denied, 376 U.S. 913.

Similarly, the Board's decision to adhere to the craft lines drawn in 1947 was not subject to judicial review. The specific Board rulings which the Court held non-reviewable in *Switchmen's Union* were craft determinations. The Act does not provide any specific guidelines for, or impose any specific prohibitions upon, the Board in defining the electorate; the matter has been left to the Board's discretion to decide on a case-to-case basis in the light of the general policies of the statute. Commissioner Eastman explained to the House Committee that in drafting the bill consideration had been given to defining crafts or classes, but that it had been decided to leave it to the Board to make those determinations in the performance of its functions under Section 2, Ninth. Hearings on H.R. 7650 (and H.R. 9689), House Committee on Interstate and Foreign Commerce, 73rd Cong., 2d Sess., p. 45; *id.*, pp. 40–41, 90, 131, 152.

Because of the absence of any specific statutory limitations upon the power of the NMB to define the electorate, the present cases are clearly distinguishable from *Leedom* v. *Kyne*, 358 U.S. 184, where a collective-bargaining-unit determination of the National

Labor Relations Board was held subject to direct judicial review. For the ground of that decision was that the Labor Board had acted "in excess of its delegated powers and contrary to a specific prohibition in the Act" (p. 188) that professional and nonprofessional employees should not be combined in a single unit without the approval of a majority of the professionals. The NMB's refusal to change its prior craft or class determinations, however, not only did not violate any specific provision of the Railway Labor Act, but was a ruling which the Act commits to the agency's discretion.

The fact that the Board's refusal to reopen the prior craft or class determination apparently rested on its view that ABNE, as a group opposed to any representation, lacked standing to challenge a unit determination that was supported by all the employees who wanted representation, does not justify a different conclusion. As we have shown (pp. 44–49, 56, *supra*), the Act permits the employees to decide upon what basis they want to be organized, and as long as all employees desiring representation agree to continue the unit previously selected, there is no occasion for the Board to reexamine the question. Since the only reason for making craft or class determinations is to determine who are the representatives chosen by a majority for the purposes of collective bargaining, an organization of employees opposed to any collective bargaining has no legally cognizable interest in the composition of the electorate.

757-778—64——5

CONCLUSION.

For the foregoing reasons, the judgment of the court of appeals should be reversed in Nos. 138 and 369, and affirmed in No. 139.

Respectfully submitted.

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DECEMBER 1964.

APPENDIX

NATIONAL MEDIATION BOARD,
Washington, November 6, 1964.

MEMORANDUM

To: All Carriers and Labor Organizations Concerned.

We are enclosing, for your information, a copy of recently issued instructions to our staff of Mediators relative to the National Mediation Board form of ballot to be used in future craft or class elections under the Railway Labor Act. Also enclosed is a sample copy of said amended form of ballot.

You will note that the referred to instructions will be applicable in all elections ordered by this Board after November 23, 1964.

THOMAS A. TRACY,
Executive Secretary.

Enclosure.

NATIONAL MEDIATION BOARD,

WASHINGTON

INSTRUCTIONS TO STAFF MEDIATORS RE FORM OF BALLOT

The Board, after consultation with the Solicitor General of the United States, directs that in all representation elections held under the Railway Labor Act after November 23, 1964, the following new language will be added to the ballot under the heading, "Instructions For Voting."

"No employee is required to vote. If less than a majority of the employees cast valid ballots, no representative will be certified."

The foregoing language will appear on the face of each ballot, as indicated on the Sample Ballot attached. In order to assure uniformity, it is directed that all such ballots conform to the attached Sample Ballot.

Dated at Washington, D.C., November 6, 1964.

By order of the National Mediation Board.

THOMAS A. TRACY,
Executive Secretary.

OFFICIAL BALLOT OF NATIONAL MEDIATION BOARD

Involving (craft or class) employees of (name of carrier) (dates of election period)

(Case number)

A dispute exists among the above named craft or class of employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of the Railway Labor Act, and the National Mediation Board is taking a SECRET BALLOT in order to ascertain and to certify the name or names of organizations or individuals designated and authorized for purposes of the Act.

INSTRUCTIONS FOR VOTING

No employee is required to vote. If less than a majority of the employees cast valid ballots, no representative will be certified.

If you desire to be represented by (name of contesting labor organization) mark an "X" in this square----------. ☐

If you desire to be represented by (name of contesting labor organization) mark an "X" in this square---------- ☐

If you desire to be represented by any other organization or individual write name of such organization or individual on the line below:
----------, and mark an "X" in this square---------- ☐

NOTICE

1. This is a Secret Ballot. Do Not Sign Your Name.

2. Marks in more than one square make ballot void.

3. Return this ballot in its entirety. Do not cut, mutilate or otherwise spoil it. If you do so, return ballot at once to Mediator and obtain a new one.

U.S. GOVERNMENT PRINTING OFFICE: 1964